

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**CUSTOMER NO. 22927**

Applicants: Walker *et al.*  
Application No.: 09/218,085  
Filed: December 28, 1998  
Title: METHOD AND APPARATUS FOR VENDING PRODUCTS

Attorney Docket No.: 98-038

Group Art Unit: 3691  
Examiner: Thu Thao Havan

**PRE-APPEAL BRIEF REQUEST FOR REVIEW  
of the Non-final Office Action mailed May 23, 2007**

**Mail Stop AF**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Examiner:

Applicants respectfully request Pre-Appeal Brief Review of the rejections set forth in the Final Office Action mailed May 23, 2007 as Part of Paper No./Mail Date 20070512 (hereinafter the "Final Office Action"). No amendments are being filed with this request and this request is being filed with a Notice of Appeal. Review is requested for the reasons set forth in the remarks beginning on the following page.

## REMARKS

### I. Introduction

Claims **19, 23, 26, 28-29, 49,** and **53-83** are currently pending in the present application. Independent claims **82-83** have been withdrawn from consideration pursuant to a Restriction Requirement. Of the claims remaining for consideration, claims **19, 49, 53, 64, 72, 76,** and **80-81** are independent.

All claims remaining for consideration (claims **19, 23, 26, 28-29, 49,** and **53-83**) stand rejected solely under 35 U.S.C. §103(a) as being allegedly unpatentable over U.S. Patent No. 4,654,800 (hereinafter "Hayashi") in view of U.S. Patent No. 5,780,133 (hereinafter "Engstrom").

### II. The Examiner Purposefully Ignores Dependent Claims

In Applicants' previous Response submitted on February 23, 2007 (hereby incorporated by reference herein), Applicants respectfully pointed out (pgs. 2-5) that no less than fifteen (15) claim limitations and nineteen (19) corresponding dependent claims were entirely ignored by the Examiner. The Examiner's response is quoted as follows:

In addition, Applicant alleges that the prior art made of record fails to teach the limitations in some of the dependent claims. Examiner particularly addressed every limitation in the independent claims. Therefore, the non-final office action of November 24, 2006 as a whole also addressed the dependent claims.

Final Office Action, pg. 4, second paragraph.

The Examiner is clearly in significant error. The Final Office Action is, in fact, incomplete to such an extent that it fails to allow Applicants to effectively counter *many* of the outstanding rejections as set forth, in contravention of 35 U.S.C. §132, 37 C.F.R. §1.104, and MPEP § 707.07.

At least for this reason, Applicants respectfully request that a new non-final office action be provided, or that the pending claims be permitted to progress to allowance.

### III. The Examiner Grossly Mischaracterizes the Cited Reference

Applicants claims are generally directed to an automatic sales machine that performs certain functions. The primary cited reference, Hayashi, generally describes a

vending machine and methods for stocking the vending machine. The Examiner, despite Applicants' attempts to describe the significant differences between the pending claims and Hayashi, continues to seriously confuse the actions of the vending machine stock person in Hayashi with actions clearly associated with a customer and/or the vending machine in the pending claims. The vending machine stocking switches/levers of Hayashi that are only accessible to the stock person, for example, have consistently been misinterpreted as customer interfaces by the Examiner. Accordingly, all rejections based on the Examiner's mischaracterizations of this cited reference should be reversed.

At least for this reason, Applicants respectfully request that a new non-final office action be provided, or that the pending claims be permitted to progress to allowance.

#### **IV. The Examiner Continues to Fail to Respond to Applicants' Arguments**

Applicants set forth no less than twelve (12) separate arguments for patentability in the previous Response, and specifically requested that the Examiner respond to Applicants' many unanswered arguments. Only two (2) of Applicants' arguments were subsequently addressed by the Examiner in the Final Office Action.

Accordingly, Applicants respectfully request that the Examiner address all of Applicants' arguments, as required by MPEP §707.07, in a subsequent non-final office action, or that the pending claims be permitted to progress to allowance.

**V. Conclusion**

At least for the foregoing reasons, it is submitted that all claims are clearly in condition for allowance and Pre-Appeal Brief Review is requested to avoid the unnecessary expense of preparing an Appeal Brief in relation to the current rejections.

Alternatively, if there remain any questions regarding the present application or the cited reference, the Examiner is cordially requested to contact Carson C.K. Fincham at telephone number (203) 461-7017 or via e-mail at [cfincham@walkerdigital.com](mailto:cfincham@walkerdigital.com), upon the Examiner's convenience.

**VI. Petition for Extension of Time to Respond**

While no fees are believed to be due at this time, please charge any fees that may be required for this Amendment to Deposit Account No. 50-0271. Furthermore, should an extension of time be required, please grant any extension of time which may be required to make this Amendment timely, and please charge any fee for such an extension to Deposit Account No. 50-0271.

Respectfully submitted,

July 19, 2007

Date

/Carson C.K. Fincham, Reg. #54096/

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